



MICHIGAN INDIGENT  
DEFENSE COMMISSION

## Best Practices

For Compliance with the MIDC's Standards

Training for Assigned Counsel, Using Experts and Investigators,  
and Independence from the Judiciary

MIDC Regional Manager Team  
December 2021

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### Minimum Standards for Indigent Criminal Defense Services

October 2021

<https://michiganidc.gov/standards/>

Standards 1, 2, 3, and 4 were approved by the Department of Licensing and Regulatory Affairs (DLRA) on May 22, 2017. These standards cover training and education of counsel, the initial client interview, use of investigation and experts, and counsel at first appearance and other critical stages. Standard 5, which requires independence from the judiciary, was approved by DLRA on October 20, 2020.

The standard for determining indigency and contribution was approved by LARA on October 28, 2021.

All trial court handling units in Michigan are required to submit plans for compliance with these approved standards no later than Tuesday, April 26, 2022.

This packet also contains the complete text of the approved standards as well as standards pending approval by LARA which were submitted in September 2018 (renumbered June 2019). These standards address defender workload limitations, qualification and review of attorneys accepting assignments in adult criminal cases, and attorney compensation.

Information about these standards, plans for compliance, and funding can be found on our website at [www.michiganidc.org](http://www.michiganidc.org).



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## Standard 1 – Training and Evaluation

# Annual requirements

12 hours or multi day (16+ hours) skills training course(s)

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## Standard 1 – Training and Evaluation

### Topics for Training

Knowledge of the Law  
Knowledge of Scientific Evidence and Applicable Defenses  
Knowledge of Technology

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#### Rules 1.1 - 1.17 Client-Lawyer Relationship

##### Rule 1.1 Competence

A lawyer shall provide competent representation to a client. A lawyer shall not:  
(a) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;  
(b) handle a legal

(c) neglect a legal

##### MAINTAINING COMPETENCE

##### Comment:

##### LEGAL KNOWLEDGE

In determining whether

particular matter, the

nature of the matter,

experience in the field,

give the matter, and i

consult with a lawyer

instances, the require

particular field of law

A lawyer need not re-

legal problems of a type with which the lawyer is unfamiliar. A newly admitted

lawyer can be as competent as a practitioner with long experience. Some important

legal skills, such as the analysis of precedent, the evaluation of evidence and legal

drafting, are required in all legal problems. Perhaps the most fundamental legal skill

consists of determining what kind of legal problem a situation may involve, a skill

that necessarily involves the particular specialized knowledge a lawyer has

provide adequate representation in a wholly novel field through necessary study.

Competent representation can also be provided through the association of a lawyer

of established competence in the field in question.

In an emergency, a lawyer may give advice or assistance in a matter in which the

lawyer does not have the skill ordinarily required where referral to or consultation

or association with another lawyer would be impractical. Even in an emergency,

however, assistance should be limited to that reasonably necessary in the

circumstances.

To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education including the knowledge and skills regarding existing and developing technology that are reasonably necessary to provide competent representation for the client in a particular matter. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

Michigan Rules of Professional Conduct

Last Updated 1/2/2020

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## Standard 1 – Training and Evaluation

### Funding

Covered in compliance plans, check to see what is approved for your system

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## Standard 1 – Training and Evaluation

### Restrictions

No outdated webinars, generally no out of state courses

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## Questions about CLE?

- Answers to FAQs for Attorneys
- Status of hours to date



<https://michiganidc.gov/cle/>



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 517-643-6875

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## Standard 1 – Training and Evaluation

### Tracking Time Spent in Training

Ethics, part II

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## Why is training important?




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### Standard 3 – Investigation and Experts

## Investigation & Experts

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### Standard 3 – Investigation and Experts

## Funding

is for adult indigent defendants

in trial court

not covered under the Appellate Defender Act

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Standard 3 – Investigation and Experts

**When should these requests be made?**



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Standard 3 – Investigation and Experts

**Prompt requests make a difference.**

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Standard 3 – Investigation and Experts

**Promptness  
WINS**



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Standard 3 – Investigation and Experts

**REMEMBER:**  
No matter how **prompt**  
always after the  
police and prosecution.

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Standard 3 – Investigation and Experts

**Promptness = Prep For**

Bond Determination Hearings

Preliminary Hearing

Pretrial

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Standard 3 – Investigation and Experts

**Prep For:**

Bond Determination Hearings

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Standard 3 – Investigation and Experts

**Prep For:**

Preliminary Hearing

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Standard 3 – Investigation and Experts

**Prep For:**

Pretrial

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Standard 3 – Investigation and Experts

**Continuous Investigation**

Before

During

After

**Trial**

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Standard 3 – Investigation

## Duty




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Standard 3 – Investigation

## Attorney v. Investigator




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Standard 3 – Investigation

What if the client  
just wants to  
plead **guilty**?

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### Standard 3 – Investigation

**What if the client  
doesn't want an  
investigation?**

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### Standard 3 – Experts

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### Standard 3 – Experts

**Why?**

Prepare the defense

Rebut the prosecution's case

Examine the evidence

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Standard 3 – Experts

## Prep the defense

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Standard 3 – Experts

## Rebut the prosecution's case

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Standard 3 – Experts



## Examine evidence

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## Standard 5 – Independence from the Judiciary



A "public defender is not, and by nature of his function cannot be, the servant of an administrative superior . . . [and] it is the constitutional obligation of the State to respect the professional independence of the public defenders whom it engages." *Polk v Dodson*, 454 U.S. 312, 321-322; 102 S.Ct. 445, 451; 70 L.Ed.2d 509 (1981)

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## Standard 5 – Independence from the Judiciary

### What *can* the judiciary do?

- Inform of rights
- Screen for indigency (maybe)\*
- Refer to local appointing authority
- Decide legal motions, i.e., attorney removal
- Provide information/advice/opinions on the delivery of services

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## Standard 5 – Independence from the Judiciary

MCL 780.993(11): "Within 180 days of receiving funds from the MIDC . . . an indigent defense system shall comply . . . in bringing its system into compliance with the minimum standards . . ."

  
GRITCHES BENTLEY  
GOVERNOR    STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING    ORLINE HAWES  
DIRECTOR  
STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
In the matter of: The Michigan Indigent Defense Commission Proposed Minimum Standard Five  
Issued and entered this 22<sup>nd</sup> day of October 2020.

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# Questions?

[www.michiganidc.gov](http://www.michiganidc.gov)

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